GOVERNMENT OF INDIA
HOME AFFAIRS
LOK SABHA

STARRED QUESTION NO:23
ANSWERED ON:16.07.2002
NHRC REPORT ON GUJARAT
VILAS BABURAO MUTTEMWAR

Will the Minister of HOME AFFAIRS be pleased to state:

(a) whether the National Human Rights Commission have submitted the final report on the Gujarat violence as reported in the `Times of India` and the `Hindustan Times` dated June 1,2002;

(b) if so, the factual position in this regard alongwith main observations and recommendations of the report;

(c) whether the Government have studied the report;

(d) if so, the reaction of the Government thereto;

(e) whether the Government have accepted the recommendations of NHRC;

(f) if so, the details thereof and if not, the reasons therefor;

(g) the fresh guidelines issued by the Union Government to the Government of Gujarat; and

(h) the steps taken by the Government to ensure that such violence may not recur in any part of the country?

Answer

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI CH.VIDYASAGAR RAO)

(a) to (h): A statement is laid on the Table of the House.

STATEMENT REFERRED TO IN REPLY TO LOK SABHA STARRED QUESTION NO.23 FOR 16TH JULY, 2002 REGAR NHRC REPORT ON GUJARAT

(a) & (b): The national Human Rights Commission have submitted their final proceedings dated 31st May, 2002 relating to the situation in Gujarat. A summary of the main observations and recommendations contained in these proceedings is enclosed.

(c),(d),(e) & (f): The Government have studied the proceedings of the NHRC dated 31st May, 2002.Most of the recommendations pertain to the Government of Gujarat and a report is to be sent by that Government to the NHRC.The Central Government is concerned with two recommendations in the Report, namely, entrusting of certain critical cases to the Central Bureau of Investigation and implementation of police reforms.

The legal position regarding entrusting of critical cases to the CBI has been explained to the Commission.Under the existing rules, the CBI can take up investigation of cases in a State only if the Government of that State makes such a request.The Government of Gujarat has not made any request for CBI investigation presumablybecause the critical cases mentioned by the NHRC are already being investigated by the investigating machinery of the State Government. The Central Government has been making every effort, consistent with the federal structure of the country to persuade the State Governments to implement the police reforms as recommended by the National Police Commission.The Ribeiro Committee Report on Police Reforms is at present before the Supreme Court and the orders of the Supreme Court on this issue will be implemented.

(g) & (h): Under the Constitution of India, it is the primary responsibility of the State Governments to maintain Public Order and Peace. The Government of India shares intelligence and sends advisories/alert messages to the States/UTs from timeto time and also makes available Central Para-Military Forces to them on specific request.A special force called the Repid Action Force is deployed to deal exclusively with the communal tensions. Assistance is also provided to the State Governments for modernization of their policing infrastructure.

The activities of all organizations having a bearing on maintenance of communal harmony in the country are, under constant watch of law enforcement agencies and requisite legal action is taken, where necessary.

ANNEXURE

ANNEXURE REFERRED TO IN REPLY TO PARTS (A) & (B) OF THE LOK SABHA STARRED QUESTION NO. 23, FOR I
ON 16.7.2002.

Main Observations of the NHRC:

(i) Failing to protect rights of life, liberty, equality and dignity

The Commission has observed and referred to its earlier proceedings of the Ist April 2002, regarding the question as to whether the State has discharged its primary and inescapable responsibility to protect the rights to life, liberty, equality and dignity of all those who constitute it. Given the history of communal violence in Gujarat, recalled in the report of the State Government itself, the Commission has raised the question whether the principle of `res ipsa loquitur`, (the affairs speaking for itself) should not apply in this case in assessing the degree of State responsibility in the failure to protect the rights of the people of Gujarat. The Commission has further added that unless this was rebutted by the State Government, the adverse inference arising against it would render it accountable. The burden of proof was, therefore, on the State Government to rebut this presumption. The Commission has further observed that nothing in the reports received by it from the State Government or the measures reportedly taken by it rebuts this presumption. The Commission has further observed that assault on the dignity and worth of the human person, particularly of women and children, through acts of rape and other humiliating crimes of violence and cruelty further supports it observations. Thus the Commission observed that the facts speak for themselves. The Commission has, therefore, reached the definite conclusion that the principle of `res ipsa loquitur` applied in this case and there was a comprehensive failure on the part of the State Government to protect the constitutional rights of the people of Gujarat, starting with the tragedy in Godhra on the 27th Feb. 2002 and continuing with the violence that ensued in the weeks that followed. The Commission has further referred to the appointment of a Security Advisor to the Chief Minister to deal with the situation and observed that this confirms that a failure had occurred earlier to bring under control the persisting violation of the rights to life, liberty, equality and dignity of the people of the State.

(ii) Failure of Intelligence:

The Commission has further observed that there was a serious failure of intelligence and a failure to take timely and adequate anticipatory steps to prevent the initial tragedy in Godhra and subsequent violence. The Commission has further observed that it appears incomprehensible that a matter which has been the subject of repeated communication between the Gujarat Intelligence Bureau and the UP State Police as to the outgoing travel plans of the `Kar sevaks` should have been so abysmally lacking intelligence as to the return journeys. Given the volatile situation that was developing in Ayodhaya at that time and the subsequent report in the press warning of the danger of inter-communal violence, it was imperative that the Gujarat Intelligence Bureau should have kept a close and continuing touch with their counter parts in UP and the Central Intelligence Bureau. The inability to establish a two way flow of intelligence clearly led to the tragic consequences.

(iii) Failure to take appropriate action:

The Commission has observed that the failure of intelligence, in its opinion, was accompanied by failure to take appropriate anticipatory and subsequent action to prevent the spread of continuation of violence. The Commission had also observed that it had pointed to `local factors and players` overwhelming the District officials in certain instances but not in others, and had asked the State Government as to who these players were, in the situations that had gone out of control. The reply of the State Government, according to the Commission, does not answer these questions. Instead, according to the Commission, the State Government refers to the `gravity` of the communal incidents which provoked the disturbances` and the role of the electronic media. The Commission has observed that while there can be no doubt whatsoever about the gravity of the Godhra tragedy, that itself should have demanded a higher degree of responsiveness from the State Government to control the likely fallout, specially in the wake of the call for the Gujarat Bandh and the publicly announced support of the State Government to that call.

(iv) Failure to identify local factors and players.

The Commission has observed that the State Government is silent regarding the information sought on `local factors and players` and has instead stated that this matter is covered by the terms of reference of the Commission of Inquiry, appointed by the State Government. The Commission has found this answer to be evasive and lacking in transparency.

(v) Pattern of Arrests:

The Commission has observed that it has made a careful analysis of the pattern of arrests indicated to it by the State Government in its report of 12th April 2002. The Commission has observed that a total number of 27,780 arrests had been made, involving both crimes and preventive detention. The Commission has further observed that the State Government has reported that of 11167 persons arrested in relation to various offences, 3269 belonged to the minority community and 7896 to the majority. As regards the 16615 preventive arrests, 13804 belonged to the majority community and 2811 to the minority community. This, however, does not indicate as to when and where the arrests were made, who were arrested and how long they were kept in custody and where those who were specifically named arrested. The Commission has further observed that as far as the report of its Spl. Representative in Gujarat almost 90 per cent of those arrested even in heinous offences like murder, arson etc. have managed to get bailed out, almost as soon as they were arrested. This is in sharp contrast to the assertion made by the State Government in its report of 12th April 2002

that bail applications of all accused persons are being strongly defended and rejected.

(vi) Uneven handling of major cases:

The Commission has observed that an analysis made by it of the State Government`s reply of 12 April 2002, illustrates the uneven manner in which some of the major cases had been handled until that date. The Commission has observed that in the Godhra incident, where 59 persons were killed, 58 persons had been arrested and all were in custody. However, in Chamanpura case, where some 50 persons including a former Member of Parliament were killed, 18 persons had been arrested. As regards Naroda Patia, where some 150 persons were reportedly killed, 22 had been arrested. In another case - Best Bakery case in Vadodara, where some 8 persons were killed, 12 accused persons were in judicial custody. However, no details have been given about the status of the 46 persons arrested in the Sadarpura case of Mehsana district where some 28 persons were reportedly killed.

(vii) Distorted FIRs:

The Commission has observed that there were numerous allegations made both in the media and to its team that FIRs in various instances were being distorted or poorly recorded, and that some senior political personalities were seeking to influence the working of police stations by their presence within them. The Commission has observed that the report of the State Government once-again fails to rebut the repeatedly made allegation that senior political personalities - who have been named - were seeking to influence the working of police stations by their presence within them. The Commission has further observed that, as per the report of its Spl. Representative in Gujarat, even when complaints of the aggrieved parties have been recorded, it has been alleged that the name of the offenders are not included. In almost all the cases, copies of the FIRs which the complainant is entitled to, has not been given. The Commission has further observed that the pervasive sense of insecurity prevailing in Gujarat , during the time of its team visit there, extended to all segments of society, including two Judges of the High Court of Gujarat, one sitting and the other retired, who were compelled to leave their homes because of the vitiated atmosphere. The Commission has observed that even as the State Government has stated that Police guards were made available for the protection of the Judges, the insecurity was such that it was not dispelled by the Police arrangements which were made. The Commission has further observed that if the response of the State Government to the security needs of two Justices of the High Court was so hopelessly inadequate, despite the time and opportunity that it had to prevent the harm that was done, it must be inferred that the response to the needs of others, who were far less prominent, was even worse. The Commission has again observed that the Gujarat Governmenthas not responded to the Confidential Report transmitted to it. The Commission has urged the Gujarat State Government to come forward with a clear response, indicating in detail the steps it has taken in respect of the persons named in that report who allegedly violated human rights or interfered in the discharge of the responsibilities of the State to protect such rights.

In the light of its above observations, the Commission has made the following recommendations:

I. Law & Order

(i) Involvement of CBI

The Commission has recalled its earlier recommendation that in view of the wide-spread allegations that FIRs had been poorly or wrongly recorded and that investigations had been influenced by extraneous considerations or players, the integrity of the process had to be resorted to. It had, therefore, recommended that certain critical cases, including the five it had specifically mentioned, be entrusted to the CBI.The Commission has noted the response of the State Government that on the ongoing investigation by the State Police and the fact that entrusting of these cases to the CBI at this stage would delay the investigation.The Commission has also noted the response of the Ministry of Home Affairs, Govt. of India, that under existing rules, the CBI can take up investigation of the cases only if the State Government makes such a request. Since in this case, the State Government has not made such a request, in view of the ongoing investigation by the State agencies, it is not possible for the Central Government to direct the CBI to take up the investigation of the cases mentioned by the NHRC. The Commission has observed that it has considered these replies, but would like to urge once-again that the critical cases mentioned by it, should be entrusted to the CBI and the Central Government should ensure that this is done, not least in view of the Rajya Sabha Resolution, referring to its responsibilities, under Article 355 of the Constitution.

(ii) Police Reforms:

The Commission has drawn attention to its earlier recommendation of the need to act decisively on the deeper question of Police Reforms, on which recommendations of the National Police Commission have been pending despite efforts to have them acted upon. The Commission has noted the history of the efforts made so far to bring about Police Reforms and of the fact that `Police` is a State subject and that the Centre at best can lead and give guidance. The Commission has, therefore, urged both the Centre and State Governments once-again, taking the situation in Gujarat as a warning and catalyst, to act with determination to implement the various Police reforms recommended and referred to above. The Commission has also urged that the matter of Police Reforms should receive due attention at the highest political level, at the Centre and in the States and that this issue be pursued in good faith and on a sustained basis with the greater interest of the country alone in mind.

(iii) Special Courts and Special Prosecutors:

The Commission has referred to its earlier recommendation in the proceedings dated the Ist April 2002, that Special Courts be established to try the most critical cases on a day-to-day basis, the Judges being hand-picked by the Chief Justice of the High Court

of Gujarat, with Special Prosecutors being appointed as needed.The Commission has observed that the response of the State Government does not indicate whether it accepts the recommendations for Special Court of the kind proposed by the Commission, the purpose of which was to ensure speedy trial. The State Government has also not responded regarding appointment of Special Prosecutors. The State Government is, therefore, being requested to clarify the facts on the above.

(iv) Special Cells:

The Commission has recalled its earlier recommendation that Special Cells be constituted under the concerned District Magistrates to follow the progress of cases not entrusted to the CBI and that these should be monitored by the Additional Director General(Crime). The Commission has noted the response of the State Government which has accepted the role proposed for the Additional Director General (Crimes), but does not confirm if appropriate action has been taken.The State Government is also silent on the recommendation of the need for Special Cells as proposed. Hence the Commission has repeated its recommendations.

(v) Time-frames for investigation:

The Commission had earlier recommended that specific time-frames to be fixed for thorough and expeditious completion of investigations. Though this recommendation appears to have been accepted by the State Government, no specific time-frames have been spelt out. The State Government has, therefore, been directed to clarify its decision on this matter.

(vi) Police Desks in Relief Camps:

The Commission had recommended that Police Desks should be set up in the Relief Camps to receive complaints, record FIRs and forward them to the Police Stations having jurisdiction.The State Government had responded that instructions to this effect had been given, and that 3532 statements and 283 FIRs had been recorded in the relief camps.The Commission has further noted that as per the report received by its from its Special Representative, Police Desks have been set only in 9 out of a total 35 relief camps, in existence in Ahmedabad, and these Desks worked only for a few days and only for two hours on an average on those days. The Commission has, therefore, recommended full compliance of its recommendations in respect of the setting up of such Police Desks in the Relief Camps.

(vii) Survey of all Affected Persons:

The Commission has urged that a comprehensive survey is expeditiously completed to establish the facts concerning the number and names of those who have been killed, or who are missing, injured, rendered widows, orphans or destitute in the violence that has ensued. The response of the Gujarat State Government does not throw any light on what is being done to gather such data.The Commission has, therefore, recommended that the State Governmentexpeditiously publish the data that is compiled, on a district-wise basis.

(viii) Analysis of material collected by NGOs and others:

The Commission had recommended that material collected by NGOs, such as Citizen`s Initiative, PUCL and others should be used. The response of the State Government indicates that such material, provided by different organizations, will be investigated and if found to be correct upon investigation, appropriately used in accordance with the law. The Commission has noted the response of the State Government and will be monitoring the action taken by the State Government in this regard.

(ix) Provocative Statements:

The Commission had drawn special attention to the provocative statements made by persons to the electronic or print media, especially the local media, and had urged that these be examined and acted upon, the burden of proof being shifted to such persons to explain or contradict their statements. The Commission has noted the reply of the State Government that such statements would be examined and acted upon appropriately. It does not indicate which statements are being examined, nor does it provide the details of the action being taken under the provisions of the Indian Penal Code and other relevant Acts against such individuals.The Commission has, therefore, recommended that it would like to receive all relevant details of the persons or organizations identified by the State Government in this connection and of the statements or actions for which they are being prosecuted. The Gujarat Government has been requested to submit a further detailed report on the above lines.

(x) Identification of delinquent public servants:

The Commission had expressly called for the identification of officers who had failed to discharged their statutory responsibilities appropriately and for proceedings to be instituted against them. The Commission had also recommended that those who have performed their duties well should be commended. The Commission has noted the reply of the State Government that it would be guided by the findings of the Commission of Inquiry appointed by the State Government, and that some of the officers who have performed the duties well have already been rewarded appropriately. The Commission is of the view that action against delinquent public servants need not, in all instances, await the outcome of the Commission of Inquiry. The Commission, therefore, recommends that prompt action be taken against delinquent public servants and the progress in the action initiated be indicated to the Commission.

(xi) Proper Implementation of Existing Statutory Provisions, Circulars and Guidelines:

The Commission has observed that communal riots are not new to India and least of all so to Gujarat, as the response of the State Government themselves indicate. The Commission would, therefore, like to stress that there already exists in the country a comprehensive body of material in the form of statutory provisions, circulars, guidelines and the like, that has been meticulously elaborated over the years, that can and must be followed by those responsible for the maintenance of law land order and communal harmony in the country. The Commission has, therefore, assessed whether the Government of Gujarat has discharged its responsibility adequately in the face of the violence that convulsed the State for over two months, against this body of material. The Commission has, therefore, listed out the range of statutes, circulars and guidelines, germane to developments in Gujarat and illustrated some of them as being relevant in the assessment of the conduct of the State Government and of its officials. It has, in particular, mentioned the Indian Penal Code, the Code of Criminal Procedure, the National Security Act; guidelines issued by the Ministry of Home Affairs, Government of India, in 1997 and circulated to all the Chief Ministers on 22 October 1997, by the then Union Home Minister, calling for an urgent action on the basis of those guidelines, particularly, relating to promoting of communal harmony and the administrative measures required for dealing with serious communal disturbances. The Commission has also noted recommendations made by the National Police Commission, which had examined the recommendations of the various Commissions of Inquiry appointed earlier to look into major incidents of communal violence, the pattern emerging from these, and the recommendations of the National Police Commission, specifically in respect of communal situation.The Commission has, after referring to the above material, come to the conclusion that the Government of Gujarat has conspicuously failed to act in accordance with the long-standing provisions of these important instructions and that, measured against the standards set by them, the performance of the State appears to be severely wanting. The Commission has, therefore, recommended that there is need for careful introspection within the State Government in this respect; the shortcomings in its performance need to be analyzed, inter alia, in the light of the statutory provisions, circulars and guidelines referred to above, and a detailed report based on that analysis should be made available by the State Government to the Ministry of Home Affairs, Government of India and to the National Human Rights Commission for their consideration.

(xii) Camps:

The Commission had recommended that the Camps should be visited by senior political leaders and officers in a systematic way and NGOs should be involved in the process.The Commission has noted the reply of the State Government which has recounted the number of visits made, the medical, para-medical, sweepers, anganwadi and other staff appointed/deployed, and the medicines distributed. After taking note of the efforts the Commission has made the following recommendations:

(a) There is a manifest need to improve sanitary conditions in the camps, and increase the provision of toilets and water supply.

(b) Particular vigilance must be ensured to prevent the spread of epidemics, measles and other illnesses having already taken a toll.

(c) While the response of the State Government indicates the quantity of food-grains, pulses, etc., supplied to the camps in 8 districts, it does not indicate the standards adopted in providing essential food-items. These standards must accord with the minimal nutritional levels set by WHO/UNICEF and the competent Ministries of the Government of India in situations such as this.

(d) There is an immediate and most critical need to provide semi-permanent structures and better protection against the elements.

(e) Camp-wise monitoring committees should be appointed to watch over each of the camps.

(f) The role and functions of NGOs should be more clearly defined than has been the case till now.

(g) The reports of the Secretary-level officers appointed to monitor work in the camps should be recorded on a prescribed form, and be available to the public as also to the Special Representative of the Commission in Gujarat.

(h) An adequate number of trauma specialists should be sent to the camps and other distressed areas for the counseling and treatment of victims.

(i) Procedures should be simplified for obtaining death certificates and ownership certificates, in order to expedite the giving of compensation. Time-frames should be set for the settlement of claims and the survey of townships and villages that have been affected.

(j) Confidence building measures should be elaborated and made public, in order to facilitate the return of camp inmates and others who have fled, to their homes and work.

The Commission recommends once again, in the circumstances, that no camp be closed without a clear recommendation from a Committee comprising the Collector, a representative of a reputed NGO, a representative of the camp, and the Special Representative of the Commission in Gujarat or a nominee of his.

II. Rehabilitation:

(i) The Commission has noted that the State Government, in its response of the 12 April 2002, has accepted its recommendation in principle that places of worship that have been destroyed be repaired expeditiously. However, little has been done to start work as yet. The Commission recommended that full list of damaged and destroyed sites/monuments be published district-wise.

(ii) The Commission has taken note of the package of relief and rehabilitation measures announced by the State Government, including the contribution from the Prime Minister`s Relief Fund.It has also noted that disbursement of assistance is still under progress. The Commission is concerned that difficulties have arisen in obtaining death and ownership certificates and has referred to this matter earlier in these Proceedings. Delays have also occurred in assessing damages and paying compensation at an appropriate level. The Commission urged that procedures be streamlined and expedited to deal with the issues mentioned above.

(iii) The Commission has noted the measures being taken to resettle the victims. The response of the State Government of 12 April 2002, does not indicate whether it has acted upon the Commission`s recommendation that HUDCO, HDFC and international funding agencies be approached to assist in the work for rehabilitation. The Commission would like a further response to this.

(iv) The Commission had recommended that the private sector, including the pharmaceutical industry should be requested to assist in the relief and rehabilitation process. The State Government has responded on 12 April 2002, that it has not experienced any shortage of drugs and medicines thus far.

(v) The Commission has also taken note of the response of the State Government in respect of the Commission`s recommendation that NGOs and the Gujarat Disaster Management Authority be associated with the relief and rehabilitation work.The plight of women and children, particularly widows, victims of rape and orphans remains of particular concern to the Commission. The commission intends to monitor this matter closely.

Concluding Observations:

The tragic events in Gujarat, starting with the Godhra incident and continuing with the violence that rocked the State for over two months, have greatly saddened the nation. There is no doubt, in the opinion of this Commission, that there was a comprehensive failure on the part of the State Government to control the persistent violation of the rights to life, liberty, equality and dignity of the people of the State. It is, of course, essential to heal the wounds and to look to a future of peace and harmony. But the pursuit of these high objectives must be based on justice and the upholding of the values of the Constitution of the Republic and the laws of the land. That is why it remains of fundamental important that the measures that required to be taken to bring the violators of human rights to book are indeed taken.